IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1846

WILLIAM E. RANQUIST, *Petitioner,*

v.

THE DIRECTOR OF THE DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, and the DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, *Respondents.*

On Petition for A Writ of Certiorari to the Appellate Court of Illinois, First Judicial District.

BRIEF FOR RESPONDENTS IN OPPOSITION

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North LaSalle Street - Suite 900,
Chicago, Illinois 60601 (793-3500),
Attorney for Respondents.

PAUL J. BARGIEL,
GREGORY G. LAWTON,
Assistant Attorneys General,
160 North LaSalle Street - Suite 800,
Chicago, Illinois 60601 (793-5635),
Of Counsel.

Printed by Authority of the State of Illinois 365

TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1846

WILLIAM E. RANQUIST, *Petitioner,*

v.

THE DIRECTOR OF THE DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, and the DEPARTMENT OF REGISTRATION AND EDUCATION OF THE STATE OF ILLINOIS, *Respondents.*

On Petition for A Writ of Certiorari to the Appellate Court of Illinois, First Judicial District.

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the Appellate Court of Illinois, First Judicial District, Third Division, is published at 55 Ill. App. 3d 545, 370 N.E. 2d 1198 (1977), and is reproduced as Appendix A of the Petition.

JURISDICTION

The jurisdictional requisites are adequately stated in petitioner's brief.

QUESTIONS PRESENTED

1. Whether respondents properly suspended petitioner's real estate salesman's license for the racially discriminatory practice of "racial steering" under the general provisions of the license act, where racially discriminatory practices in the sale or rental of housing are expressly forbidden by the Illinois Constitution?

2. Whether the deference accorded by a reviewing court to the reasoned, expert decision of a specialized regulatory agency denies petitioner due process of law?

STATEMENT OF THE CASE

Petitioner, William E. Ranquist, is a real estate salesman employed by McKey & Poague, Inc., a corporate real estate broker, and licensed pursuant to the Real Estate Brokers and Salesmen License Act of 1973 (Ill. Rev. Stat., Ch. 114½, § 101 *et seq.* (1973)). The Department initially sought the suspension of plaintiff's license for violations of six different subsections of section 115 of the Act.* These subsections empower the Department to suspend or revoke a real estate salesman's license where the salesman is found guilty of:

> 11. Having demonstrated unworthiness or incompetency to act as a real estate broker or salesman in such manner as to safeguard the interest of the public;
>
> 15. Any other conduct, whether of the same or a different character from that specified in this Section which constitutes dishonest dealing;
>
> 21. Disregarding or violating any provision of this Act, or the published rules or regulations promulgated by the Department to enforce this Act;
>
> 26. Making any misrepresentations concerning the race, color, religion or national origin of persons in a locality or any part thereof for the purpose of inducing or discouraging a listing for sale or rental or the sale or rental of any real estate;

---

*Petitioner's employer, McKey & Poague, Inc., was also charged with the same violations of the license act in the amended complaint. Following the hearing, however, the Real Estate Examining Committee (upon whose recommendation the Director may act) found that the Department had failed to prove its case against McKey & Poague, and recommended that no action be taken against it. This action, therefore, concerns only petitioner William E. Ranquist.

28. Refusing to show listings or real estate because of the race, color, religion or national origin of any prospective purchaser, lessee or tenant, or because of the race, color, religion or national origin of the residents in the area in which the property is located;

31. Volunteering of information on the race, color, religion or national origin of the residents of a community or part thereof.

Petitioner moved to strike subsections 26, 28 and 31 of section 115(e) from the complaint on the ground that these sections became effective after the conduct alleged in the complaint had occurred. These subsections were then stricken from the charges, and the Department proceeded on the basis of subsections 11, 15, and 21, as originally charged.

The Department's amended complaint charged petitioner with having made misrepresentations about the racial character of a Chicago area neighborhood during the course of a sale. Following the hearing, the Real Estate Examining Committee (a group of licensed real estate professionals who hear and determine charges against licensed brokers and salesmen) found that the factual allegations of the complaint were proved. The Committee therefore recommended to the Director of the Department of Registration and Education that petitioner's real estate salesman's license be suspended for a period of sixty days. This recommendation was subsequently adopted by the Director.

On judicial review of the Director's order in the circuit court under the Illinois Administrative Review Act (Ill. Rev. Stat., Ch. 110, § 264 *et seq.*), the Department's suspension order was reversed. The circuit court ruled that the acts complained of were outside the scope of the license act in effect at the time petitioner's conduct occurred.

On appeal, the Appellate Court reversed the circuit court and reaffirmed the order of the Director, holding that petitioner's conduct "demonstrated unworthiness or incompetency to act as a real estate broker or salesman in such manner as to safeguard the interest of the public" and constituted "dishonest dealing." The Supreme Court of Illinois subsequently denied leave to appeal.

ARGUMENT

I.

PETITIONER HAS BEEN AFFORDED DUE PROCESS OF LAW.

A.

Petitioner Has No Cause To Complain That He Had No Warning That His Conduct Was Prohibited, Because Racially Discriminatory Practices Violate The Illinois Constitution And Contravene The State's Strong Public Policy Forbidding Racial Discrimination.

Ordinary standards of due process and fundamental fairness require that those persons who are subject to governmental regulation be sufficiently apprised of their duties under the applicable regulatory statute. *Coates* v. *City of Cincinnati,* 402 U.S. 611, 614, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971); *Bouie* v. *City of Columbia,* 378 U.S. 347, 349, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964). In the instant case, petitioner contends that the decision of the Appellate Court deprives him of due process because he was not given fair warning that racial discrimination was cause for suspension of his salesman's license under the License Act. However, this contention is plainly erroneous and should be rejected by this Court, as it was by the Illinois Appellate Court.

Petitioner clearly had prior warning that his conduct was prohibited by law. As the Illinois Appellate Court noted in its opinion, discriminatory practices in the sale or rental of housing are prohibited by express provision in the human rights article of the Illinois Constitution (App. 14a-15a). Article I, section 17 of the Illinois Constitution reads:

> No Discrimination In Employment And The Sale Or Rental Of Property
>
> All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practice of any employer or in the sale or rental of property. These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation.

This section has been in effect since the adoption of the Illinois Constitution of 1970, long before petitioner's misconduct occurred. Thus, it cannot be said that petitioner did not have prior or fair warning that racially discriminatory practices were prohibited by law because the Constitution of the State of Illinois itself forbids them.

The holding of the Appellate Court in this case is thus narrow and precise. The Court held, and held only, that the Illinois Department of Registration and Education has the power, under the discretionary authority granted to it by the legislature, to suspend or revoke a real estate salesman's license for "demonstrated unworthiness" and "dishonest dealing," where the licensee has contravened the express provision of the Illinois Constitution which prohibits racially discriminatory practices in the sale or rental of housing. When so viewed, it is apparent that the decision of the Appellate Court is altogether consistent with this Court's decisions in *Bouie* v. *City of Columbia,* 378 U.S. 347, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964), and *Coates* v. *City of Cincinnati,* 402 U.S. 611, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971).

Moreover, the holding of the Appellate Court is plainly supported by appellate decisions of other States. In New

York, courts have repeatedly held that a real estate broker who discriminates on the basis of race "demonstrates untrustworthiness" to act as a real estate agent, and may properly be suspended from brokerage or sales activities. See, e.g., *Diona* v. *Lomenzo*, 26 A.D. 2d 473, 275 N.Y.S. 2d 663 (1966); *Birch* v. *Lomenzo*, 31 A.D. 2d 825, 298 N.Y.S. 2d 281 (1969); *Kamper* v. *Department of State of the State of New York*, 26 A.D. 2d 697, 272 N.Y.S. 2d 808 (1966); *Butterly & Green, Inc.* v. *Lomenzo*, 36 N.Y. 2d 250, 367 N.Y.S. 2d 230 (1975).

In *Diona* v. *Lomenzo*, 26 A.D. 2d 473, 275 N.Y.S. 2d 663 (1966), for example, the license of a real estate broker was suspended for racial discrimination under a New York statute authorizing the suspension or revocation of a license for "demonstrated untrustworthiness." This statute is very similar to the Illinois statute in question here. On appeal, the broker contended that his suspension was unauthorized because racial discrimination did not constitute "demonstrated untrustworthiness" within the meaning of the statute, a contention analogous to that argued in the case at bar. In rejecting that argument, the court said:

> On this appeal petitioner urges the disciplinary powers of respondent are limited to those matters enumerated [in the relevant New York statute], and "untrustworthiness is not synonymous with discrimination." It is true the word is not synonymous. *Certain discriminatory practices contravene New York's public policy and also are forbidden by law.* [citations omitted.] (Emphasis added.)

The Court further noted that

> The state has power to enact laws safeguarding its peace and security, including laws prohibiting discrimination [citation]. *Knowledgeable violation of state law and policy is a factor which properly may be considered by the licensing authority, an agency of government, in determining untrustworthiness.* The State also has power to require licensing of brokers [citation] and to establish reasonable conditions for the maintenance of such license. The purpose in the licensing of brokers and salesmen "is to assure by means of licensing competency and the observance of professional conduct on the part of real estate brokers and salesmen." [Citation]. "The real estate broker is brought by his calling into a relation of trust and confidence" [citation], *and demonstrated misconduct in disregard of law and public policy may be considered in determining untrustworthiness.*
> 275 N.Y.S. 2d at 667, 668. (Emphasis added.)

The approach of the New York courts has been followed here. The Appellate Court held that a real estate broker, who engages in racially discriminatory activities in violation of the express provisions of the Illinois Constitution and in contravention of the State's strong public policy forbidding racial discrimination, engages in "dishonest dealing" and "demonstrates unworthiness to act as a real estate broker or salesman." This holding assuredly violates no due process rights of petitioner.

B.

The Deference Accorded By A Reviewing Court To The Reasoned, Expert Judgment Of A Specialized Regulatory Agency Does Not Deny Petitioner Due Process Of Law.

Petitioner further argues that the Appellate Court's decision confers upon an administrative agency the power to determine what the law is, and that the Court, in deferring to the decision of an administrative body, effectively abandoned judicial review. This is manifestly not the case.

The Appellate Court did no more than employ common and well known canons of statutory construction; i.e., that the decision of an expert administrative agency as to a

question of law will be accorded "great weight" by a reviewing Court; and that, where the legislature has delegated to an expert agency the task of interpreting and administering a broad statutory standard, the agency's decision should usually be adopted as controlling. These canons of construction are well established by prior Illinois precedents. See, e.g., *Legg* v. *Jewell Co.*, 63 Ill. 2d 336, 348 N.E. 2d 161 (1976); *Legg* v. *Illinois Fair Employment Practices Commission*, 28 Ill. App. 3d 932, 329 N.E. 2d 486 (1975) (administrative interpretation of statute to be accepted as controlling).

In adhering to these canons of construction, the Court merely accorded the decision of the agency the deference that is due an expert, reasoned administrative judgment. The Court's reliance upon the expertise of the agency is understandable. State legislatures are increasingly compelled to rely upon specialized, expert agencies to cope with the burgeoning problems in administering state government. In the instant case, the charges filed against petitioner were heard by the Real Estate Examining Committee of the Illinois Department of Registration and Education. The Committee is a group of real estate brokers and salesmen, familiar with the real estate profession, its practices, and its standards. Ill. Rev. Stat., Ch. 114½, § 108 (1975). Clearly, great weight should be given to the expert appraisal of this panel.

The decision of the agency, however, is not conclusive, as petitioner suggests. The Appellate Court itself acknowledged that it was in no way bound by an agency's conclusions of law, and could reject an administrative agency's erroneous construction or application of a particular statute. (App. 7a-8a.) Thus, any party aggrieved by agency action is afforded a meaningful opportunity for judicial review, and petitioner's argument to the contrary is plainly without merit.

Petitioner's further contention that the Appellate Court "abandoned" judicial review in the recent case of *McKey & Poague, Inc.* v. *Stackler*, —— Ill. App. 3d ——, —— N.E. 2d —— (No. 76-1158, April 14, 1978, rehearing denied August 29, 1978) is also without merit. In *McKey & Poague*, the license of two real estate brokers were suspended for short periods for an incident involving racial discrimination in the rental of an apartment. Although the Appellate Court relied in part upon the *Ranquist* decision, the Court found that the plaintiff-brokers' conduct fell squarely within the ambit of a rule which clearly prohibited racial discrimination by a broker. The Court thus rejected in *McKey & Poague* the same due process arguments raised here. Petitioner's suggestion that the *Ranquist* opinion has had far-reaching, unconstitutional consequences is plainly unfounded.

II.

THE CASE AT BAR DOES NOT WARRANT REVIEW BY THIS COURT.

It is apparent that the decision of the Appellate Court did not abandon the principles of due process set forth by this Court in *Bouie* v. *City of Columbia*, 378 U.S. 347, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964). Petitioner clearly had fair warning that his conduct was prohibited, and that there was therefore cause for suspension of his real estate salesman's license. The legal contentions of petitioner are without merit and this case does not warrant a hearing in this Court.

Moreover, the issue decided by the Appellate Court is very narrow and arises out of unique circumstances not likely to be repeated. Given the lack of general application of the case at bar, the decision of the Appellate Court does not merit further review by this Court.

CONCLUSION

For the reasons stated above, respondents, the Director of the Department of Registration of the State of Illinois, *et al.*, respectfully request that this Honorable Court deny the petition for a writ of certiorari.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North LaSalle Street - Suite 900,
Chicago, Illinois 60601 (793-3500),
Attorney for Respondents.

PAUL J. BARGIEL,
GREGORY G. LAWTON,
Assistant Attorneys General,
160 North LaSalle Street - Suite 800,
Chicago, Illinois 60601 (793-5635),
Of Counsel.